A SYNOPSIS STATEMENT

ON

GENDER VIOLENCE: IN VIEW OF HUMAN RIGHTS AND GENDER JUSTICE IN INDIA

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INTRODUCTION

Human dignity is one of those attributes that is considered the most supreme one in the society. Every human today and has always strived for the dignity that he or she is entitled to. The Indian Constitution provides the same to all the citizens of India, irrespective of their caste, creed, colour, sex or place of birth.

The word ‘Gender’ is a socio-cultural term that refers to the socially defined roles and behaviours assigned to males and females in the society. We sometimes confuse between the term gender and sex. Gender may be understood as a man-made concept, while ‘sex’ is natural or biological characteristics of human beings and the word ‘sex’ is a physiological phenomenon which defines man and woman.

When we talk about gender inequality, we know that it is a global issue and is fundamentally accepted human right to not be ill-treated on the basis of gender. In India, the status of women is considered to be the foundation for the progress of the society, but on the contrary there are many instances of unequal treatment as well as discrimination in the field of health, education, survival and even employment along with other points in social life.

Gender justice may be understood as a concept which focuses on a world where there is no discrimination based on the person’s gender. It entails ending the inequalities between women and men that are produced and then also reproduced in the family, society, market and the state. Gender justice has not based on biological differences. Its object is to eradicate man-made differences in such areas like economic, social, cultural, political and civil. To provide justice against gender biasness, the Constitution of India guarantees the right against gender discrimination to its citizens. So, it can be said that ‘Gender Justice’ is a broad term that takes in its sweep every facet of life.

The judiciary is an independent body that is unbiased and unprejudiced along with being evenhanded. It functions within the defined concept of Separation of Powers under the framework of Indian Constitution. When it comes to Judicial Activism, we need to understand its concept. It basically means the rulings of court based on rational, political or

personal factors along with prudence of the judges presiding over the issue or the existing legislation. According to S P Sathe, "A court giving a new meaning to the provision to suit the changing social or economic conditions or expanding the horizons of the rights of the individual is said to be an activist court."

Judicial activism can be positive as well as negative. A court engaged in altering the power relations to make them more equitable is said to be positively activist and a court using its ingenuity to maintain the status quo in power relations is said to be negatively activist.

To define human rights, is always not that easy. A comprehensive definition of human rights may not be possible due to the nature of the right itself and changes in perception taking place gradually over a period of time. The Constitution of India provides its citizens with Fundamental and other rights. These are considered as basic human rights for all the citizens irrespective of their caste, colour, creed, gender or place of birth. Human Rights in India is a country-wide issue due to its large population, poverty, lack of proper education and diverse culture. The country has independent judiciary as well as other bodies to look into these issues.

In the Criminal Justice system, sometimes the victim of crime becomes the forgotten man. The focus mainly is on criminal and crime, not on victim. The genesis of crime and victim emerge with human rights. In the past, many times the Indian legal regime has failed to protect victims' rights in two fundamental ways i.e. failing to enact suitable laws and failing to implement both the letter and spirit of the law. Novel concept of victimology is a step towards fulfilling the avowed promises made by the Constitution makers. Ensuring restorative justice is a different way of thinking about the crime.

Indian legislature has not defined victim of crime under any law and probably the Indian Judiciary is also on the same footing. The etymological meaning of phrase suggests that it would mean the following:

- Anyone suffering physical, emotional or financial harm as a direct result of crime
- Spouses and children of the person who has suffered
- Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims, or victims of homicide.

The victim is a heavy loser in the present situation, in the criminal justice system. The violation of human rights is ought to create a victim. Victims have a right to be compensated for the losses that has been committed on them as it is their human right. That is why the administration of justice with respect to human rights in both international and Indian perspective is relevant.

A review of the decisions of Indian judiciary regarding protection of human rights indicates that the judiciary has been playing the role of a saviour in situation where the executive and legislature have to address the problems of the victims. The judiciary comes forward with corrective measures and provides necessary directions to the executive and legislature. So it is rightly said that it is the foremost duty of the State and all its organs to provide justice to victims.

SOCIAL AND INSTITUTIONAL BARRIERS VICTIMS ENCOUNTER

There is a need to consider both social barriers as well as institutional barriers that victims have experienced in accessing criminal justice. Such barriers include:

- Social stigma and cultural views
- Family and community pressure
- Lack of legal knowledge and understanding of victims' rights
- Lack of interpreters and challenges in communication
- Lack of trust, or fear of criminal justice providers
- Fear of retaliation by the perpetrator and lack of protection measures
- Limited access to gender-sensitive criminal justice providers
- Fear that reporting violence will create more issues
- Lengthy delays in criminal trials
- Insensitive or indifferent treatment by criminal justice providers
- Trivialization of the violence
- Lack of privacy
- Financial consequences of participating in the criminal justice system (possibility of loss of job, absences from work, transportation, babysitting, cost of forensic exam, etc.)
- Burden to initiate formal report and prosecution is often on the victim
- Emphasis on mediation or informal settlement
- Lack of legal assistance and victim support
- Ineffective and insensitive investigations
- Challenges in the collection of evidence
- Lack of safety guarantees at the courthouse and during trials
- Traumatizing courts
- Challenges for women to give testimony in court
- Lack of dissuasive, effective and proportionate punishments

SCOPE

The study on Gender equality includes the history and previous records of the suffrage and movements of men and women. Other key areas included shall be related to employment, education, government, domesticity etc. In addition, the study shall also include literature and other reviews relevant to this field.

The views on the current events including interviews and debates on judicial activism shall also be considered. A future study on the same is very much possible as judicial activism has flourished in India and acquired enormous legitimacy with the Indian public. However, this approach is bound to create friction and tension that is natural.

When it comes to victims, along with general rights, special rights for certain groups with unique needs are a must. This study shall focus on the same and shall also note, exactly who the law considers a ‘victim’. The struggle of victims to have formal rights on many fronts continues. The study shall analyze and demonstrate the obstacles that victims encounter.

OBJECTIVE OF THE STUDY

1. To discuss various Constitutional Rights and remedies regarding gender justice;
2. To understand and formulate new policies for the protection and development of a victims of human rights in India;
3. To highlight the legislative and constitutional provisions of human rights in India;
4. To understand the necessity of women empowerment;
5. To analyze the role played by the Government and non-governmental organizations in protection of rights of Human Rights victims in India;
6. To analyze various aspects of the victims' problems and hurdles they face in India.

HYPOTHESIS

1. That whether victim is the forgotten figure of the Justice System;
2. That whether Gender Violence and Human Rights are connected in some context;
3. That compensations provide Inadequate Financial Solutions to the Victim's Problems;
4. That whether the existing laws are sufficient for gender justice or some more laws & measures are required;
5. That the need to make the uneducated as well as educated people aware about their rights and duties and should be able to use them as and when required;
6. That literacy along with awareness is the solution to curb this problem.

RESEARCH METHODOLOGY

Methodology followed in the study is analytical, comparative and descriptive. It is based on the analysis of concepts, principles and reported cases. The area of study is a complex and multi-dimensional one and hence analytical and doctrinal methods are used. In addition, historical method has been used for bringing out the history and development of human rights.